



Association for Local Telecommunications Services

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE ATTORNEY

October 30, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, DC 20554

The Honorable Susan Ness
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, DC 20554

The Honorable Michael K. Powell
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, DC 20554

The Honorable Harold Furchtgott-Roth
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, DC 20554

The Honorable Gloria Tristani
Commissioner
Federal Communications Commission
1919 M Street, N.W., Room 826
Washington, DC 20554

Re: Reciprocal Compensation for Local Calls to ISPs; CC Docket No. 96-98;
CCB/CPD No. 97-30; CC Docket Nos. 98-79; 98-103; 98-161; 98-168

Dear Chairman and Commissioners:

ALTS and its members have visited your staff and members of the Common Carrier Bureau many times in recent days concerning the Commission's order on the DSL tariff investigations, which is scheduled to be adopted today. We are extremely grateful for the time and attention you have devoted to this important issue. In particular, we are gratified by the apparently unanimous opinion that your action on the DSL tariff investigation should not disrupt the contracts that currently exist concerning dial-up calls to ISPs, and the many state and court decisions interpreting and implementing those contracts.

To insure this important goal is accomplished, ALTS is attaching the specific language that, at a minimum, needs to be included. ALTS believes this specific wording will insure that current contracts concerning dial-up traffic to ISPs are not overturned by the Commission's action on the DSL tariffs, and that the determinations of twenty-three states and several courts are preserved.

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We know you appreciate the importance of this issue to start-up competitors, and that you wish to avoid any inadvertent interference with the unanimous determination of the states on this matter. Accordingly, ALTS respectfully but urgently requests that this language be included in the DSL tariff order.

Please let us know if we can answer any questions about this very important matter.

Sincerely,



Cronan O'Connell

cc: K. Brown
T. Power
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K. Martin
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P. Gallant
J. Schlichting
J. Jackson
R. Lerner

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HOW TO ASSERT INTERSTATE JURISDICTION OVER DSL TARIFFS WITHOUT IMPAIRING EXISTING INTERCONNECTION CONTRACTS

ALTS understands the Commission is contemplating asserting Federal jurisdiction over the pending DSL tariffs, but that the Commission does not want its action to disrupt existing contracts between incumbents and new entrants for the exchange of traffic. ALTS appreciates the Commission's concern about this important issue, and hereby proposes language that will insure existing contracts are unaffected by the Commission's action. ALTS believes this language also fully preserves the Commission's flexibility to address the appropriate regulatory and cost recovery treatment of ISP traffic while also preserving Commission prerogatives with respect to facilities used to connect to ISPs,¹ and to guide the negotiation and approval of future interconnection contracts.

First, the order should include a finding that none of the pending tariffs meets the statutory definition of "exchange access": **"While we have found that these tariffs are properly tariffed in the interstate jurisdiction, they do not constitute 'exchange access' as defined in section 3(16) of the Act because they do not originate or terminate any 'telephone toll services' (see BellSouth Comments at 17, and U S WEST comments at 2)."**

Second, the order should also include the following findings, depending upon the particular theory of interstate jurisdiction adopted by the Commission:

If the Commission relies upon the "jurisdictionally mixed" nature of the traffic:

"We also find that our assertion of jurisdiction over these tariffs does not alter the regulatory treatment of circuit-switched services carrying traffic to ISPs, where we have looked to the states for many years to set rates and supervise carrier-to-carrier compensation. The Eighth Circuit recently upheld our conclusion that the overall costs of such dial-up calls are reasonably recovered at the present time through a combination of intrastate end user rates, and interstate rate elements such as the SLC (Southwestern Bell v. FCC, 153 F.3d 523, 543 (1998)). The traffic in the tariffs before us here utilizes facilities that are very different from dial-up traffic, namely DSL loop technology in conjunction with ATM transport, and thus poses entirely distinct cost recovery issues best addressed by federal tariffing. Accordingly, our decision to exercise active tariff authority over

¹ See Advanced Wireline Services, CC Docket No. 98-147.

the present filings while leaving undisturbed the existing regulatory environment under which states set the rates for dial-up calls to ISPs and supervise existing contracts among the carriers handling this traffic, is fully within the broad discretion recognized by the Eighth Circuit's order (*id.* at 544; *see also* our holding in the ONA Order, CC Docket No. 88-2, Phase I, 4 FCC Rcd 1, para. 308 (1988), that we have discretion to permit provisioning of such facilities pursuant to state tariff), and does not alter any decision the states have made with respect to reciprocal compensation for those calls. Our determination of the jurisdictional nature of this traffic does not affect the validity of these decisions, including the classification of this traffic as "local" under existing interconnection contracts. To the extent we wish to examine any part of this system in the future, including the negotiation and regulatory oversight of future interconnection contracts, we will address that matter in a separate proceeding."

If the Commission relies upon a "single call" theory:

"We also find that our assertion of jurisdiction over these tariffs does not alter the regulatory treatment of circuit-switched services carrying traffic to ISPs, where we have looked to the states for many years to set rates and supervise carrier-to-carrier compensation. And even if our assertion of jurisdiction over the present traffic were applicable to dial-up traffic, we hereby expressly decline to exercise any such jurisdiction at the present time. Instead, we leave undisturbed the existing regulatory environment under which states set the rates for dial-up calls to ISPs, and supervise existing contracts among the carriers handling this traffic. Our determination of the jurisdictional nature of this traffic does not affect the validity of these decisions, including the classification of this traffic as "local" under existing interconnection contracts. Our decision to minimize disruption of state authority is supported by established precedent and policy. For example, in Memory Call, 7 FCC Rcd 1619 (1992), where the state action directly conflicted with our policies, we carefully limited our exercise of jurisdiction to the proposed state-ordered "freeze" on the provisioning of an enhanced service, but we made no changes to the state's authority over carrier provisioning of the enhanced service involved. Where the states are implementing our policy or acting consistently with our policy, as is the case here, we do not attempt to supplant the exercise of state authority. To the extent we wish to examine

any aspect of state supervision of dial-up calls to ISPs in the future, including the negotiation and regulatory oversight of future interconnection contracts, we will address that matter in a separate proceeding."

Because of the likelihood that incumbent providers will attempt to misuse a jurisdictional finding by this Commission in an effort to overturn existing interconnection contracts as they have been upheld by state agencies, ALTS respectfully but urgently requests that the above language be included in the Commission's order.